IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

OSA NO.5 Of 2001.
Judgment Reserved on:8.5.2007.
Date of decision: May 21st, 2007.

Smt. Lila Devi. ……. Appellant-Plaintiff.

Vs.

State of H.P. and others. …Respondents-Defendants.

Coram

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

[*]Whether approved for reporting? No.

For the appellant: Mr. G.D. Verma, Sr. Advocate with
Mr. B.C.Verma, Advocate.

For the respondent: Mr. M.S. Chandel, Advocate General with
Mr.R.M. Bisht, Dy. Advocate General for
respondents No.1 to 4.

None for respondent No.5.

Surinder Singh, J :

The appellant is feeling aggrieved by the judgment and decree passed by the Learned Single Judge in Civil Suit No.4 of 1997 dated 10.11.2000.

Case of the Plaintiff.

The brief facts are that the appellant hereinafter called the plaintiff had filed a suit claiming herself to be the owner of khasra No.589, situated in village Kathalighat, Mauza Katoli, Tehsil Kandaghat, District Solan, H.P. where upon she had constructed a pucca house in the year 1990 by investing about Rs.1,00,000/- and was running a `dhaba', from where she was earning Rs.5,000/-. It is further alleged that one Shri M.D. Sharma, a

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[*] ***Whether reporters of local Papers may be allowed to see the judgment? Yes.***

retired Subedar, who had strained relations with her, made a complaint to the Chief Minister regarding the alleged encroachment on the government land. Consequently, the Assistant Engineer without conducting any inquiry, lodged a report before the Collector without verifying the facts. The Collector started ejectment proceedings under the **H.P. Public Premises and Land (Eviction and Unauthorized Occupations) Act, 1971.** During the proceedings, the Collector got conducted the demarcation in her presence and no opportunity was alleged to have been afforded to assail such demarcation, thus illegally ordered for her ejectment on 7.8.1995 and within 2 days her house was demolished. Thus, suffered a loss to the tune of Rs.8,50,000/-, for which she filed the suit for damages under the different heads as follows:-

1.	Amount of damages on account of illegal demolition of her building.	Rs.1,00,000.00
2.	Amount of damages on account of depriving of her belongings (Furniture, utensils and ration etc.)	Rs. 50,000.00
3.	Amount of damages on account of loss of business and deprivation of sources of income.	Rs.2,00,000.00
4.	Amount of damages on account of mental torture and harassment etc.	Rs.5,00,000.00
	Total:	Rs.8,50,000.00

CASE OF THE DEFENDANT

By way of written statement, the respondents, hereinafter called as defendants, have resisted and contested the suit on the ground that khasra No.620/589, measuring 10 biswas is recorded in the possession of Public Works Department as `gair mumkin sadak' (road), which is so existing on the spot. It is specifically pleaded that the plaintiff had raised a `dhara' type structure on a portion of the land (khasra No.620/589/1)

owned by the defendants as indicated in the tatima. The plaintiff wanted to grab this portion of the land of the Government and started raising unauthorized construction, within the acquired width of the National Highway No.22, a show cause notice was issued on 24.11.1992, by the Collector, Kandaghat under the **H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971**, hereinafter called as the **Public Premises Act,** directing her to stop the construction, but despite that the plaintiff continued with the unlawful activities. The demarcation was also got carried out from the Revenue Officer with a notice to her, but she evades the service of notice and continued with the illegal and unauthorized construction on the Government land. Thus the said proceedings were initiated against her. The show cause notice was received by her. She had appeared before the Collector and filed the reply. From time to time. the adjournments as per her request were granted. She was not condemned unheard. The Collector had also made his subjective satisfaction by directing a Revenue Officer to verify the authenticity of the claim made by her, by demarcating the land in the presence of the parties, which was done. Again the fact of encroachment was confirmed and order of ejectment was passed and she was rightly evicted from the land owned by the Government. Therefore, prayed for dismissal of the suit.

ISSUES

On the pleading of the parties, the learned Single Judge on 1.8.1997, framed the following issues to resolve the controversy:-

1. Whether the building of the plaintiff has been illegally demolished by the defendant, as alleged? OPP.

2. If issue No.1 is decided in the affirmative, whether the plaintiff is entitled to recover the amount claimed, as alleged? OPP.

3. Whether the plaintiff has no cause of action? OPD.

4. Relief.

FINDINGS ON ISSUES BY THE LD.SINGLE JUDGE.

The parties led their evidence and after having heard the learned counsel for the parties and upon going through the evidence on record, the learned Single Judge held that it was not established on record that the plaintiff was owner of the land bearing khasra No.589 as claimed by her. Documentary evidence referred to, on record itself depicted that the land measuring 10 biswas, comprised in khasra No. 620/589 belonged to the State, defendant No.1 which was encroached upon by raising a Dhara and the proceedings for her ejectment were initiated and the final order of ejectment was passed on 7.8.1995 under the provisions of Public Premises Act. Consequently, the Dhara was demolished. The learned Single Judge while relying upon **AIR 1992 Punjab & Haryana 248**, **AIR 1969 SC 439**, **AIR 1969 SC 560** and **AIR 1991 SC 855,** held that in view of the Section 15 of the Public Premises Act, the jurisdiction of civil court is barred, therefore, it cannot go into the legality of order Ext.PE. On account of these findings on issue Nos.1 and 3, the plaintiff was held not entitled for any damages, thus issue No.2 was decided against the plaintiff, consequently, the suit was dismissed.

CONTENTION IN APPEAL BEFORE US.

The plaintiff has questioned in this appeal the legality and proprietary of the impugned Judgment and decree, and took up the ground that learned Single Judge has misappreciated the evidence of the plaintiff. The real point of controversy was neither considered nor appreciated correctly. In fact the plaintiff is stated to have supported her claim with the aid of the revenue record, placed in the suit and there was no iota of evidence to show that the house in question was constructed over the Government land. Thus, the bar as created by Section 15 of the

Public Premises Act, was not attracted at all. As such, prayed for acceptance of the appeal.

Submissions before us

We have heard the learned counsel for the parties and have carefully gone through the record. Shri G.D. Verma, learned Senior Advocate, for the plaintiff (appellant) has forcefully argued that the house of the plaintiff was wrongfully demolished which was constructed long back over the land owned by her. In order to support his plea, he has taken us through the pleadings and the oral as well as documentary evidence on record and laid stress that the order of ejectment (Ext.PE) passed by the Collector was wrong and illegal. Therefore, prayed for the reversal of the issue wise findings against the plaintiff and for decreeing the suit in her favour.

Contra, Shri Ram Murti Bisht, learned Deputy Advocate General has countered the aforesaid arguments by submitting that the plaintiff had camouflaged the relief in the suit by virtually assailing the order of ejectment passed by the Collector under the Public Premises Act to avoid the bar created by Section 15 of the Act. It is also argued that the remedy of appeal was available to the plaintiff under the said Act which was not availed. The order of ejectment cannot be questioned even indirectly in the civil proceedings and further argued that nothing has been brought on record by the plaintiff that the house/Dhara was over the land owned by her. While supporting the impugned judgment and decree, the learned Deputy Advocate General has taken us through the revenue records and argued that the proper and ample opportunities were granted to the plaintiff to prove her case and she failed before the Collector as well as before the learned Single Judge to prove her case. Therefore, impugned judgment and decree are legally and factually sustainable.

Our FINDINGS

To appreciate the rival contentions, we have reappraised the evidence adduced by the parties. As per as the jamabandi for the years 1960-61 Ext. PA, Khasra No.589 total measuring 1 bigha 07 biswas stood in the ownership of Mrs. Parvati widow of Sobha Ram whereas Smt. Dasodha widow of Sita Ram is shown as non-occupancy tenant, Bila Lagan Baweja Rajamandi Bahmi. The nature of the land is shown as Ghasni over 1 bigha 5 biswas and 0-2 as Bakhal Abbal. This khasra No.589 was later divided into two parts i.e. Khasra No.620/589 and 621/589. Jamabandi (Ext.PB) for the year 1980-81 placed in evidence by the plaintiff shows Ms. Dasodha as non-occupancy tenant over 0-17 biswas in Khasra No.621/589 (ghasni) under Ms. Parvati whereas in the remarks column there is an entry of mutation No.125 dated 28.7.1989, whereby this land is shown to have been sold to one Shri Maheshwar Dutt. On the other hand, second part of Khasra No.589, i.e. khasra No.620/589 measuring 0-10 biswas is shown to have been owned by the Government of Himachal Pradesh and is recorded in the possession of the Public Works Department. Therefore, jamabandi (Ext.PC) prepared for the years 1995-96, repeats the same entries except for showing Maheshwar Dutt as owner in place of Smt. Parvati over Khasra No.621/589 measuring 0-17 biswas. The case of the plaintiff has been that she has a house over Khasra No.589 for the last about 40 years but there is no entry to this effect in the revenue record on any portion referred above. The State Government had acquired 0.10 Biswas from Khasra No.589 which was assigned Khasra No.620/589 and the nature of land is recorded as " GAIR MUMKIN SADAK ". According to the case of the defendant, the plaintiff had encroached upon this portion of the land of the defendant and she was rightly evicted therefrom, under the Public Premises Act. During the pendency of the case before the Collector, DW-2 Shri K.D. Sharma, Naib Tehsildar was appointed to demarcate the land to

ascertain the claim of the plaintiff. He was also examined as a witness by the Collector, and had proved his demarcation report Ext.PW2/A which was conducted in the presence of parties and no one had raised the objection at the time of demarcation. He has categorically stated that one dhara of plaintiff was found over one biswa of land of the State Government which was shown by assigning khasra No.620/589/1 in the Aks tatima. Main focus of the arguments of the leaned counsel for the petitioner has been that the Collector had conducted the proceedings under the Public Premises Act in a very cursory manner. The main gamut of the statement of petitioner Leela Devi was that the eviction order Ext.PE passed by the Collector was based on conjectures. In her cross-examination, she has admitted before the Collector that she was present at the spot during the demarcation conducted by the Naib Tehsildar and did not raise any objection against such demarcation nor filed any appeal. She had also examined PW 4 Shri Shiv Dutt and Sh. Balbir Singh (PW2), Civil Engineer to show the existence of her house. Since the plaintiff had filed the suit, the onus was upon her to prove that the house in question fell in Khasra No.621/569 which she failed to discharge.

In view of the above evidence, learned counsel for the plaintiff has taken pains to show that in the proceedings before the Collector under the Public Premises Act, there was no evidence before him to conclude that the plaintiff had encroached upon the government land. In our opinion, this plea in this civil suit cannot be allowed to be raised as the jurisdiction of the civil court is barred, as already discussed above. Therefore. **AIR 1969 SC 78**, **1993(3) SC 162** and **AIR 2003 SC 2508** cited by the learned counsel for the plaintiff to show that the civil court can assume jurisdiction, is of no consequence in the given circumstances. Therefore, the appeal merits dismissal.

No other point urged.

CONCLUSION

On the critical examination of the evidence on record, we did not find that the impugned judgment and decree suffered from any infirmity, which require our indulgence, the learned Single Judge has committed no error, as such, we affirm the issue-wise findings. Accordingly, the appeal is dismissed with costs.

(Deepak Gupta)
Judge.

May 21, 2007.
(PDS)

(Surinder Singh)
Judge.